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IN THE
COURT OF APPEALS OF INDIANA

BRIDGET RADFORD	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0010-CR-452
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William S. Mercuri, Judge
Cause No. 49F07-9904-CM-127501

June 11, 2001

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Bridget Radford appeals her conviction of disorderly conduct, a Class B misdemeanor, following a bench trial. We reverse.

Issues

Radford raises two issues for our review, which we restate as follows:

1. Whether there was sufficient evidence to support Radford's conviction of disorderly conduct; and

2. Whether Radford's protestations against police activity constituted political speech protected by the Indiana Constitution.

Facts and Procedural History[1]

The facts most favorable to the verdict reveal that Radford took her ex-husband to the local police station to make a report that he had stolen her car. The receptionist referred her to a civilian officer who asked Radford some questions and then refused to file the report because it appeared to the officer that Radford had actually loaned the car to her ex-husband. Radford became upset.

Officer Edmond Stamm was in his office down the hall from the reception area when he heard a commotion and went to investigate. He observed Radford yelling at the front desk clerk about the report. Between five and eight other civilian persons were also in the reception area. Officer Stamm identified himself and told Radford that if she had a complaint, she should talk to a supervisor, but she needed to be quiet and not yell at police

[1] Oral argument was held in this case on April 27, 2001 at Twin Lakes High School in Monticello, Indiana. We express our appreciation to White County for the invitation, to the school, its staff and students

personnel. Radford's voice escalated and she began to curse. Officer Stamm advised her again to quit yelling and quiet down, but she failed to do so. He therefore advised Radford that he was placing her under arrest for disorderly conduct.

Radford was tried to the bench and found guilty of disorderly conduct. This appeal ensued.

Discussion and Decision

I. Sufficiency of the Evidence

Radford first contends that the evidence was insufficient as a matter of law to support her conviction for disorderly conduct.

A. Standard of Review

When reviewing a challenge to the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). We consider only the evidence most favorable to the judgment, as well as all reasonable inferences to be drawn therefrom. Id. If the evidence and inferences provide substantial evidence of probative value to support the verdict, we must affirm. Id.

B. "Unreasonable" Noise

Indiana Code section 35-43-1-3 defines the offense of disorderly conduct to be committed by "[a] person who recklessly, knowingly, or intentionally . . . makes unreasonable noise and continues to do so after being asked to stop . . . ." Ind. Code § 35-45-1-3(2). The information by which Radford was charged alleged that Radford committed

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for their hospitality, and to counsel for Radford, Jan Stevens, and Scott Kreider, a certified legal intern appearing for the State, for the quality of their presentations.

disorderly conduct in that she "recklessly: [e]ngaged in fighting or in conduct that resulted in or was likely to result in serious bodily injury to a person or substantial damage to property, specifically: yelling & screaming at police personnel at West Dist[rict] Roll Call, causing a crowd to gather" and "[m]ade unreasonable noise by: cursing at civilian police personnel." R. 13.

The criminalization of "unreasonable noise" was "aimed at preventing the harm which flows from the volume" of noise. Price v. State, 622 N.E.2d 954, 966 (Ind. 1993). The prohibition against unreasonable noise in Indiana's disorderly conduct statute is aimed at the intrusiveness and loudness of expression, not whether the content of the language is obscene or provocative. Hooks v. State, 660 N.E.2d 1076, 1077 (Ind. Ct. App. 1996), trans. denied. To sustain a conviction, the State must show that the complained-of speech infringed upon the right to peace and tranquility enjoyed by others by producing decibels of sound that are too loud for the circumstances. Id; Whittington v. State, 669 N.E.2d 1363, 1367 (Ind. 1996). In Whittington, our supreme court noted that a loud noise could be found unreasonable where it agitates witnesses and disrupts police investigations, threatens the safety of injured parties by aggravating their trauma or by distracting medical personnel, makes coordination of investigations and medical treatment more difficult, or is annoying to others present at the scene. 669 N.E.2d at 1367.

We agree with Radford's contention at oral argument that the "unreasonableness" of the noise depends upon the facts and circumstances surrounding the incident. In this case, Radford was in a police station when she was arrested for making unreasonable noise.

Although a certain level of decorum is expected in any public place, a police station would not ordinarily be considered a "quiet" place, like a library or a hospital. See Radford v. State, 640 N.E.2d 90, 93 (Ind. Ct. App. 1994), trans. denied (noting that defendant's conduct occurred in the quiet hallway of a hospital). Thus, the "reasonableness" of the noise Radford made must be considered in the context of that forum.

The State presented evidence that several civilians were in the area of the incident at issue and all looked "surprised" at the confrontation between Radford and the officers. Officer Stamm was in his office down the hall from the waiting area with the door shut and was able to hear "yelling and screaming." R. 36. Officer Stamm and several other officers responded to the commotion. Under these facts, we believe that it might be possible to prove disorderly conduct. However, in this case, the charging information was very narrow, and the State failed to prove its specific allegations. As to the first allegation, there is absolutely no evidence that Radford's "yelling and screaming" resulted in or was likely to result in serious bodily injury or substantial damage to property. Moreover, there is no evidence that she caused a crowd to gather. The "crowd" was already present in the police station, with people attending to business of their own. There was no proof that the civilians in the waiting area left the waiting area and became involved in the commotion. The only people who gathered in the area were police officers who came to investigate the commotion. Thus, the State wholly failed to prove the first allegation of its information. As to the second allegation, to the extent Radford argues that her "outburst produced no harm beyond a fleeting annoyance," Brief of Defendant/Appellant at 6, we note that it is not our role, on

appeal, to reassess the evidence or the credibility of the witnesses. However, as noted above, it is not the content of the speech, but the intrusiveness and loudness of the speech, which constitutes "unreasonable noise" under the disorderly conduct statute. The State alleged that Radford made unreasonable noise by cursing at police personnel, an allegation directed to the content of her speech. Thus, merely proving that Radford cursed at police personnel is insufficient to demonstrate that she engaged in disorderly conduct. Accordingly, we hold that, as a matter of law, the State failed to prove by substantial evidence of probative value that Radford committed disorderly conduct.

II. Protected Speech

Radford also contends that her state constitutional right to speak was violated by her arrest and subsequent conviction for disorderly conduct. However, because we have determined that there was not sufficient evidence to support her conviction, we need not address this issue.

Conclusion

The State failed to prove the specific allegations of its information for disorderly conduct and therefore, there was insufficient evidence to support Radford's conviction. Accordingly, her conviction is reversed.

Reversed.

BROOK, J., and VAIDIK, J., concur.